

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2438 of 2007

Date of Decision : 14.09.2007

Surinder Singh

.....Appellant

versus

Mohinder Singh

.....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.N.S.Sodhi, Advocate for the appellant.

-:-

JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby a suit for recovery of Rs.1,00,000/- on the basis of Pronote and Receipt dated 23.12.1999 was decreed.

The plaintiff has proved the execution of the Pronote on the basis of statement of PW-1 Sukhwinder Pal and PW-3 Sushil Kumar, who deposed that the defendant received an amount of Rs.1,00,000/- from the plaintiff on 23.12.1999 and the Pronote and Receipt were scribed by Balwant Singh Scribe in their presence. The contents of the Pronote and Receipt were read over and explained to the defendant and the defendant signed the same after admitting the contents of the same as correct.

Learned counsel for the appellant has vehemently argued that the plaintiff is a Commission Agent running the business of finance company. In fact, the defendant has financial dealings with the plaintiff in respect of which a pass book Exhibit D-1 was issued. Since the plaintiff was running

the business of financier, he has obtained the signatures on certain blank papers which has been forged by the plaintiff as Pronote and Receipt. Therefore, the findings recorded by the Courts below are not sustainable.

In the written statement, the defendant has taken up a stand that the Pronote and Receipt are forged and fabricated documents. The defendant has not taken a stand that the plaintiff is a Commission Agent or a financier or that in the course of financial dealings with the plaintiff, the plaintiff has obtained signatures of the defendant on the blank papers. In fact, in reply to the legal notice served on behalf of the appellant as well, the stand taken is that the Pronote and Receipt are forged and fabricated documents. Even at that time, the defendant has not alleged that his signatures have been obtained by the plaintiff on blank papers in the course of his independent dealings. Therefore, the stand of the appellant that the plaintiff has obtained his signatures on blank papers is an after thought. The finding regarding execution of the Pronote is recorded on the basis of testimony of the witnesses produced by the plaintiff and moreso when the stand of the defendant is pure simpliciter denial in the written statement. The defendant cannot be permitted to improve his case in evidence without laying foundation for such evidence in the pleadings.

The assertion of the appellant that Exhibit D-1 is the pass book of the Company of the plaintiff and the signatures of his partner Gurmeet Singh Virk are available on Exhibit D-2, stands admitted. Therefore, inference can be raised that the plaintiff has taken signatures of the defendant on blank papers and have converted the same as Pronote and Receipt. In the absence of any cogent evidence in respect of fraud and misrepresentation, the Courts below were justified in law in holding that the

execution of the Pronote and Receipt is proved and such proof carries presumption of consideration as well. The stand now sought to be taken was not taken at the earliest available opportunity, therefore, the arguments seem to be after thought only. The findings of fact are sought to be disputed by re-appreciation of evidence in second appeal. Such findings have been recorded after discussing the entire evidence in detail.

I do not find that such findings of fact can be permitted to be disputed by re-appreciation of evidence in the present second appeal. I do not find any illegality or irregularity in the finding recorded by the Courts below which may give rise to any substantial question of law in second appeal. Consequently, the present appeal is dismissed.

14-09-2007

*mohinder

(HEMANT GUPTA)
JUDGE